

**Office of Massachusetts Attorney General  
Martha Coakley**



**Program Guidelines**

***Face to Face Mediation Programs***

Revised: December 2009

### **Statutory Requirements:**

- Use of Funds: The Local Consumer Aid Fund ("LCAF") grant funds shall only be used for expenses involved with the intake, resolution, and administration of consumer complaints. By state law, such funds must be expended for a general public purpose
- Pursuant to [M.G.L. c. 12, §8\(F\)\(J\)](#), all charitable organizations, except those organized exclusively for religious purposes, must register and file annual financial reports with the Non-Profit Organization/Public Charities Division of the Attorney General's Office. All organizations which are eligible for tax exempt status under [26 U.S.C. §501\(c\)\(3\)](#) are charitable organizations and must file such reports. Failure to do so will result in the loss of funds.
- Unemployment Insurance The AGO requests that LCAF grant recipients choose the "contributory" rather than the "payments in lieu of contributions" method of financing unemployment benefits as allowed under the Employment Security Law ([151A, §14A](#)). LCAF grant monies may be used for the quarterly contributions to the unemployment insurance fund. However, under no circumstances can LCAF grant monies be used to pay unemployment benefits.

### **Minimum Standards of Performance:**

- Face to Face Mediation Programs (FTFMPs) must adhere to "The Uniform Rules on Dispute Resolution" as set forth by the Trial Court Standing Committee on Dispute Resolution.
- FTFMPs may charge fees to parties for mediation according to the following provisions:
  - no party will be denied mediation due to an inability to pay;
  - the offer to waive the fee must be clearly disclosed to all parties when inquiring about the mediation service;
  - fees should not exceed the current small claims filing fee;
  - fees collected in this manner may not be commingled with the FTFMP account.
  - FTFMPs may not charge for a case referred from a Local Consumer Program
- Each FTFMP is responsible for providing phone response to consumers a minimum of 37.5 hours per week. Additionally, each FTFMP must have an answering machine or voicemail system to receive calls outside of hours of business. However, under no circumstances should a phone go unanswered during normal business hours.
- Mediation should be made available to disputants at times other than the standard hours of operation.
- Each FTFMP must have a functioning computer with internet access, word-processing capability, and spreadsheet capability.
- An FTFMP must, at a minimum have one email address dedicated solely to the work of the FTFMP.

- Notice of office closings must be given to the AGO staff at least three days in advance. In the event of an office closing, the office's voicemail must indicate that the office is closed, when the office will reopen, and a number for immediate assistance.
- No FTFMP may close for more than five consecutive business days without advance written permission from the AGO.
- Each FTFMP agrees to accept for its services area mediation referrals forwarded from the AGO.
- Each FTFMP agrees to accept all complaints filed directly with its office (as opposed to complaints forwarded by the AGO) regardless of the location of the parties. These complaints should be mediated or referred to another agency as appropriate.

### **Relationship to the Office of the Attorney General:**

- At any time reference is made to the FTFMP's affiliation with the AGO (in writing or verbally,) use the statement "working in cooperation with the Office of the Attorney General."
- The FTFMP agrees to identify the AGO as a funding source for the program in any brochures, annual reports, or other funding materials.
- The primary point of contact for FTFMP in the AGO is Aaron Kravitz, Program Manager in the Community Information and Education Division, (617) 963-2096 or [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us).

### **Mediation Process:**

- Once a referral is made, staff should contact the parties by phone or letter to provide an explanation of the face-to-face mediation process. *A case should be counted as a "referral" if at least one party has actively contacted the program.*
- An "Agreement to Participate" form should be signed, in accordance with [M.G.L. c. 233, § 23C](#) of the General Laws, by all parties before mediation.
- All referrals should receive an I.D. # and be entered into a master log.
- Terms of agreement should be clearly written on an agreement form; each party should receive a copy. One copy should remain in the case folder. Staff should follow-up on the settlement until all the terms are completed if possible. If no agreement is reached, the parties should be sent back to the referring agent or to small claims court.
- At the end of each mediation, mediators and clients should fill out post-mediation evaluation forms.
- An agreement should be reported as upheld on the monthly report form if the majority of the term(s) are met.

- A mediation case folder should contain:
  - an intake form;
  - a *signed* Agreement to Participate form;
  - a client contact sheet with dates/content of actions taken and conversations held;
  - post-mediation evaluation forms;
  - a signed copy of the mediated agreement if in writing;
  - notes confirming that the agreement has been upheld and completed (if possible)
- Complete case notes should be kept on the case folder for each complaint. Personal opinions of the mediator or any staff should not be recorded in the file.

### **Public Records Requests/Records Retention:**

- All complaints files should be retained and accessible for ten years.
- **All complaints files should be retained and accessible for ten years. Requests to shred or otherwise destroy files older than 10 years must be made in writing (email is acceptable) to the AGO for submission to the Records Conservation Board for destruction permission. Records may not be shredded or otherwise destroyed until the AGO confirms in writing that such permission has been granted.**
  - Note: Records containing personal information such as social security or credit card numbers must be destroyed by shredding in accordance with [M.G.L. c. 93L, § 2](#).
- All inquiries from the press related to information concerning consumer complaints and/or practices of a business must be referred to the press office of the AGO. The press staff may direct the media to the FTFMPs as appropriate, but will first notify the FTFMP director and will discuss the nature of the request and the type of information he/she is at liberty to discuss.
- FTFMP Directors may not talk to the media about complaint-related information until they have received clearance from the press office or other Attorney General staff.
- The FTFMP may discuss generally with the press the type of service it provides and the kinds of complaints the program typically handles.
- In any press contact, the FTFMP should mention that it is a recipient of funds disbursed by the AGO and that it works in cooperation with the AGO.
- According to [M.G.L. c. 233 § 23C](#), all "memoranda" and "other work product" prepared by a mediator and a mediator's case files shall be confidential and protected from disclosure in any judicial or administrative proceeding. It can be interpreted under this statute that protection is also provided to mediation files requested under the Massachusetts Public Records Law. In the event of such a request, the FTF should contact Aaron Kravitz ([aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us), (617) 963-2096).

**Education and Outreach:**

- FTFMPs are encouraged to participate in education, training, and outreach activities in their communities with the funds they receive from the LCAF.
- In their outreach or education efforts, FTFMP may only discuss mediation or dispute resolution issues or techniques in general. Under no circumstances are the FTFMP staff members to discuss specific companies, consumers, or mediations.

**Reporting Requirements:**

- All reports must be submitted electronically to [aaron.kravitz@state.ma.us](mailto:aaron.kravitz@state.ma.us).
- As a condition of grant award, each FTFMP agrees that representatives of the AGO may at any time review the books and records of the FTFMP to ensure compliance with the terms of the grant award. Such inspection, review and/or audit by representatives of the AGO may occur at any time, with or without notice to the FTFMP.
- By the last day of October, January, March, and July, FTFMPs must submit the attached financial and program reporting forms.
- Documentation (such as vouchers, pay stubs, receipts or copies of receipts) need not be attached to the financial reporting form, but must be made available to the AGO upon request. Failure to provide such documentation may result in the loss of the remaining funds, and recuporation of expenses that cannot be appropriately documented.
- For the purposes of reporting, “referral” means an instance in which one of the parties involved in a potential mediation speaks or corresponds with a mediator or other FTFMP staff member about a specific potential mediation.
- For the purposes of reporting “contact” means any passive outreach, such as mailings, general announcements about the availability of mediation, or advertising.

**Legal Representation:**

- The AGO is unable to provide legal representation to volunteers and/or paid staff of FTFMPs who are sued or subpoenaed with respect to mediations handled pursuant to these awards.

**Confidentiality/Conflict of Interest:**

- Information the FTFMP gains through its affiliation with the AGO is confidential and must not be disclosed. Such information includes but is not limited to: internal memos, lists and discussions of pending investigations, as well as trends or cases being reviewed by the AGO.
- Under no circumstances may an FTF elicit or attempt to elicit any information other than that pertinent to the resolution of the mediation, except if subject to civil or criminal legal process.
- FTFMP staff/volunteers shall not disclose any information related to or obtained in the course of mediation to any person other than the participant or the employees of the AGO, without the explicit authorization of the participants.
- Conflict of Interest: M.G.L., Chapter 268A (Conduct of Public Officials and Employees) may be applicable in some cases.

**Attachment A****LOCAL CONSUMER AID FUND FINANCIAL REPORTING FORM**

Name of Program \_\_\_\_\_

Reporting Period \_\_\_\_\_

Item	Annual Amount													Balance To Date
	Budgeted	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	
Salaries														
Fringe														
Telephone														
Supplies														
Postage														
Rent														
Equipment														
Training														
Travel														
Stipends														
Other														
<b>TOTALS</b>														

Submit one report for each LCAF grant. Each monthly column should show the amount spent in each category for that month alone. The reports should be cumulative, showing previous month's expenditures as well as the present month. Documentation of expenses must be attached, as per LCAF Fiscal Guidelines.

This form must be submitted by the 15<sup>th</sup> day of April, July, October and January to:

Office of the Attorney General  
Community Information and Education Division  
One Ashburton Place, Boston, MA 02108-1698

Form Prepared By: \_\_\_\_\_

[Name]

\_\_\_\_\_  
[Telephone No.]

Program Name

**FTFMP STATISTICS**  
**7/1/07 - 6/30/08**

	<u>July- Sept</u>	<u>Oct- Dec</u>	<u>Jan- Mar</u>	<u>April- June</u>	<u>YEAR TOTALS</u>
<b><u>GENERAL INFORMATION</u></b>					
- # Contact	_____	_____	_____	_____	_____
- # Referrals	_____	_____	_____	_____	_____
- # Telephone settlements	_____	_____	_____	_____	_____
- # FTF mediation	_____	_____	_____	_____	_____
- # Agreements	_____	_____	_____	_____	_____
- # Broken agreements	_____	_____	_____	_____	_____
- Aver. # parties per mediation	_____	_____	_____	_____	_____
- \$ Returned to parties	_____	_____	_____	_____	_____
- Non-\$ value to parties	_____	_____	_____	_____	_____
<b><u>**REFERRAL SOURCE</u></b>					
- Small claims court	_____	_____	_____	_____	_____
- Summary process	_____	_____	_____	_____	_____
- Local consumer programs	_____	_____	_____	_____	_____
- Community agencies	_____	_____	_____	_____	_____
- Other	=====	=====	=====	=====	=====
<b>TOTAL: (equal to # of med.)</b>	_____	_____	_____	_____	_____

	<u>July- Sept</u>	<u>Oct- Dec</u>	<u>Jan- Mar</u>	<u>April- June</u>	<u>YEAR TOTALS</u>
<b>**<u>TYPE OF DISPUTE</u></b>					
Advertising	_____	_____	_____	_____	_____
Auto Repair	_____	_____	_____	_____	_____
Auto Sales/Leasing/Rental	_____	_____	_____	_____	_____
Business/Services/Trades	_____	_____	_____	_____	_____
Cable/Satellite	_____	_____	_____	_____	_____
Credit	_____	_____	_____	_____	_____
Debt Collection	_____	_____	_____	_____	_____
Financial Institution	_____	_____	_____	_____	_____
Fitness/Health Club	_____	_____	_____	_____	_____
Government/Public Benefits	_____	_____	_____	_____	_____
Health Care	_____	_____	_____	_____	_____
Health Insurance	_____	_____	_____	_____	_____
Home Improvement	_____	_____	_____	_____	_____
Insurance	_____	_____	_____	_____	_____
Internet	_____	_____	_____	_____	_____
Landlord/Tenant Issues	_____	_____	_____	_____	_____
Mortgage Companies/Brokers	_____	_____	_____	_____	_____
Travel	_____	_____	_____	_____	_____
Timeshare	_____	_____	_____	_____	_____
Real Estate/Homes/Condos	_____	_____	_____	_____	_____
Retail Sales/Store & Restaurants	_____	_____	_____	_____	_____
Retail Sales/Mail	_____	_____	_____	_____	_____
Retail Sales/Internet	_____	_____	_____	_____	_____
Scams/Schemes	_____	_____	_____	_____	_____
Substituted Judgment	_____	_____	_____	_____	_____
Telemarketing	_____	_____	_____	_____	_____
Utility/Telephone – Landline	_____	_____	_____	_____	_____
Utility/Telephone – Wireless	_____	_____	_____	_____	_____
Utility/Electricity	_____	_____	_____	_____	_____
Utility/Gas	_____	_____	_____	_____	_____
Non-regulated Fuel	_____	_____	_____	_____	_____
Utility/Water & Sewer	_____	_____	_____	_____	_____
<b>TOTAL: (equal to # of med.)</b>	_____	_____	_____	_____	_____
<b>** of cases that were mediated</b>					



## CONFIDENTIALITY STATUTE

**M.G.L. c. 233 §23C. Work product of mediator confidential; confidential communications; exception; mediator defined.**

All memoranda, and other work product prepared by a mediator and a mediator's case files shall be confidential and not subject to disclosure in any judicial or administrative proceeding involving any of the parties to any mediation to which such materials apply. Any communication made in the course of and relating to the subject matter of any mediation and which is made in the presence of such mediator by any participant, mediator or other person shall be a confidential communication and not subject to disclosure in any judicial or administrative proceeding; provided, however, that the provisions of this section shall not apply to the mediation of labor disputes.

For the purposes of this section a mediator shall mean a person not a party to a dispute who enters into a written agreement with the parties to assist them in resolving their disputes and has completed at least thirty hours of training in mediation and who either has four years of professional experience as a mediator or is accountable to a dispute resolution organization which has been in existence for at least three years or one who has been appointed to mediate by a judicial or governmental body.

**Sample Mediation Referral Letter - Complainant**

Dear:

Your complaint against \_\_\_\_\_ has been forwarded to my attention for possible mediation. Mediation is a process in which two parties who have a conflict meet with a neutral third party to discuss their ideas for resolving the conflict. Mediation is a voluntary process conducted by neutral, trained, volunteer mediators, and all the decisions about the outcome are made by the parties.

Our mediations, which are held on evenings and Saturdays, as well as during the day, are free of charge. Eighty percent of the parties who enter mediation resolve their conflict by mutual agreement. This attempt at settlement can be tried as a preliminary step before filing a case in court, or it can be used after filing during the waiting period for court action.

Please call me at \_\_\_\_\_. Any questions you may have about your case can be answered at that time.

Thank you for your cooperation.

Sincerely,

Name  
FTFMP Director

**Sample Mediation Referral Letter - Respondent**

Dear:

Our office has received a complaint filed by \_\_\_\_\_ which concerns you as well. We ask that you contact this office regarding mediation of the complaint.

Mediation is a process in which two parties who have a disagreement meet with a neutral third party to discuss their ideas for resolving the conflict. Mediation is a voluntary process conducted by neutral, trained, volunteer mediators, and all decisions about the outcome are made by the parties.

Mediation sessions which are held on evenings and Saturdays, as well as during the day, are free of charge. Eighty percent of the parties who enter mediation resolve their conflict by mutual agreement. This attempt at settlement can be tried as a preliminary step before the filing of a case in court, or it can be used after filing during the waiting period for court action.

Please call me at \_\_\_\_\_. Any questions you may have about your case can be answered at that time.

Thank you for your cooperation.

Sincerely,

Name  
FTFMP Director

**AGREEMENT TO PARTICIPATE**

I agree to participate in a mediation session(s) conducted by the

\_\_\_\_\_  
FTFMP

I understand that mediation is a voluntary process used for resolving disputes. Mediators will make every effort within the limits of Massachusetts law to keep confidential any information shared in these sessions.

<u><b>SIGNATURE</b></u>	<u><b>NAME (print)</b></u>	<u><b>DATE</b></u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**AGREEMENT**

We, the undersigned, acting in good faith, hereby agree to abide by the terms of the following agreement:

**We understand that this agreement is one part of the mediation process which is not confidential.**

<b>Signatures</b>	<b>Date</b>	<b>Mediators</b>	<b>Date</b>
<hr/>		<hr/>	
<hr/>		<hr/>	
<hr/>		<hr/>	
<hr/>		<hr/>	

**POST-MEDIATION EVALUATION  
(To Be Used By Mediator)**

**Name of Mediator:**

**Date:**

**Names of Parties:**

1. What was the emotional tone of the public session?
2. Did you feel that you maintained the trust of the disputants through the public session?
3. Did the parties communicate in any positive way in the public session?
4. Did you use the mediators' caucus to plan strategy?
5. How well did you anticipate the issues that would arise in the private session?
6. What mediation techniques were especially effective with these parties?
7. What problems did you have transmitting information between parties?
8. Additional comments regarding the private sessions:
9. Were the parties satisfied with the agreement?
10. Do you anticipate any problems with the agreement?
11. If no agreement was reached, why?
12. Do you have any follow-up suggestions for the staff?
13. How did your co-mediation work out? Did you have any disagreements?
14. Are there any issues you would like handled at the next training session?

Case # \_\_\_\_\_  
Client \_\_\_\_\_  
Date \_\_\_\_\_

## CLIENT EVALUATION FORM

### Attachment I

### MEDIATION

1. **Please describe your experience with Mediation:**
  - a. very good
  - b. good
  - c. fair
  - d. poor
  
2. **If Mediation was helpful, please describe the reasons why:**
  - a. settled the problem
  - b. increased communication
  - c. decreased anger
  - d. helped us understand each other
  - e. taught us to solve problems
  - f. other:
  
3. **If Mediation was not helpful, please describe the reasons why:**
  - a. problems too severe
  - b. increased anger
  - c. made problems worse
  - d. not everyone willing to try
  - e. didn't like the mediators
  - f. other:

### AGREEMENT

1. **Do you think the agreement was fair?**
  - a. yes
  - b. no
  - c. not sure
2. **Do you think the agreement will last?**
  - a. yes
  - b. no
  - c. not sure
3. **Did you feel forced into the agreement?**
  - a. yes
  - b. no
  - c. somewhat

### MEDIATORS *(Please give your opinion of each Mediator):*

#### Mediator 1

#### Mediator 2

- |  |  |  |
|--|--|--|
| 1. <b>Were you treated with respect?</b> | yes no somewhat  | yes no somewhat  |
| 2. <b>Did s/he take sides?</b>           | yes no somewhat  | yes no somewhat  |
| 3. <b>Was s/he too forceful?</b>         | yes no somewhat  | yes no somewhat  |
| 4. <b>Describe overall performance:</b>  | <ol style="list-style-type: none"><li>a. very good</li><li>b. good</li><li>c. fair</li><li>d. poor</li></ol> | <ol style="list-style-type: none"><li>a. very good</li><li>b. good</li><li>c. fair</li><li>d. poor</li></ol> |

**Any other comments you would like to make?**